IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Govind Ram. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 1374/2007

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Date of Order: May 02, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr.Tej Singh Champawat, for the petitioner.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to consider his application for compassionate appointment and appoint him, and also seeks quashing of the order Annx.12 dated 15-5-2006.

I have heard learned counsel for the petitioner.

Briefly stated, the facts giving rise to the instant writ petition are that Thakra Ram was a regular employee of the

Forest Department working on the post of Tractor-Guard since 1986; however, while in service, he died on 2-12-1986 vide Annx.1. Deceased Thakra Ram left behind him his widow Smt. Antrari Devi. It is stated that after the death of her husband, Smt. Antari Devi, the widow of Thakra Ram, as per the wishes of her deceased husband, took the petitioner in adoption and thereafter the petitioner sought for compassionate appointment, which has not been considered by the respondents. Hence this writ petition.

The petitioner claims compassionate appointment under the Rajasthan Recruitment of Dependents of Government Servant Dying while in Service Rules, 1975 (for short, "the Rules of 1975" hereinafter). By the order Annx.12 dated 15-5-2006, the petitioner was informed by the respondent authority that Thakara Ram, the Tractor Guard, died on 2-12-1986 and after the death of government employee late Thakra Ram, the petitioner was taken in adoption after about 15 years i.e. on 4-2-2002 and, therefore, the adoption of the petitioner is contrary to the provisions of Sections 9 and 11 of the Hindu Adoptions and Maintenance Act, 1956 and even the adoption deed does not bear the signatures of the natural mother and father of the petitioner and as is required under the law, the age difference should be 21 years between the age of the petitioner and Smt. Antari Devi but it is less than 21 years and, therefore, the

adoption is not valid.

Be that as it may, the Rules of 1975 came to be repealed by the Rajasthan Compassionate Appointment of Dependants of Deceased Government Servants Rules, 1996 (for short,"the Rules of 1996" hereinafter) and the saving clause thereof does not save the rights, if any, accrued under the Rules of 1975, though dependants of the Government servant dying while in service do not stand to acquire any right of employment but requires consideration of case for compassionate appointment if fulfills the requisition conditions and, therefore, without going into the issues as to whether the adoption is in accordance of law or not and whether the adoption of the petitioner is valid or not, the petitioner's claim for compassionate appointment otherwise also cannot be accepted.

This controversy came to be considered by a Division Bench of this Court in The Board of Rajasthan & Anr. Vs. Rajendra & 3 ors., 2001 (2) Western Law Cases (Raj.) 51, wherein the Division Bench of this Court held as under:-

> "In our opinion, the dependants of the deceased Government servants do not stand to acquire any right of employment nor does any such accrued to them by mere death of such Government servant and, therefore, they cannot be allowed to invoke Section 6 (1) (C) of the Rajasthan General Clauses Act which provides that where any Rajasthan Law repeals any enactment thereto made, then unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred any enactment so

> repealed because in the present case not only a different intentio appears in the scheme of Rule 4, 10 (3) and 10 (6) of the Rules of 1996 when they are compared with Rules of 1975, but also not right of any description was acquired, accrued or incurred by the dependants under the repealed rules. Law is well settled that whenever an Act is repealed, it must be considered, except as to transactions passed and closed as if it had never existed. The effect of repeal with rule 15 in the present case was to obliterate the Rules of 1975 completely from the book and as if it has never been framed and it never existed to the extent of actions which were initiated, taken and concluded while the rules of 1975 were existing. Moreover, existence of corresponding provisions similar to the one contained in repealed provisions is condition precedent to claim that a different intention does not appear in the new rules and, therefore, the rights of the dependants automatically get obliterated and as a result and effect of the provisions relating to repeal, earlier provisions no longer survive. As to the meaning of right accrued and acquired and as to what effect would be there on the rights where a contrary intention appears in the new set of Rules."

The Division Bench, while observing above, placed reliance on a decision of the Hon'ble Supreme Court in Gajraj Singh & ors. Vs. State Transport Appellate Tribunal, (1997) 1 SCC 650, wherein the Hon'ble Supreme Court held that whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of Parliament as if it had never been passed; it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was in existing law.

The same view was reiterated by another Division Bench of this Court in The State of Rajasthan & ors. Vs.Sushil Kumar Natani, 2001 (3) Western Law Cases (Raj.) 533.

In this view of the matter, even without examining the validity of adoption, the petitioner has absolutely no case to be considered at such a belated stage, i.e. after 24 years from the death of the deceased Government servant.

Consequently, the writ petition is dismissed. There shall be no order as to costs.

(H.R. PANWAR), J.

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